

WGA Strike: What Are the Deal Points?

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Negotiations have broken off for the time being at least, but it's still important to understand what's at issue. There are now several recent proposals that have been publicly disclosed, as I had hoped would be the case (see [WGA Strike - Confusion Reigns](#)). What deal points are on the table and how far apart are the parties? I've written a [very detailed memo](#), which includes references to supporting documents. Here's a summary, as of 12/7/07 (early A.M.). A caveat – the studios have not described their proposal in detail, whereas the Guild has described both parties' proposals in detail; so, the description of the studios' proposal is based on the Guild's description.

DVD Residuals. The Guild was seeking to double the DVD residual, but has withdrawn this proposal. This removes a major impediment to a deal, although I think it's a mistake. See [Slipped Disc: Why DVD Residuals Still Matter — and Always Will](#).

New Media Residuals. This is the big issue. The proposals are complicated:

- For paid exhibition (such as iTunes downloads) of movies or television programs, the Guild wants 2.5% of the studio's receipts. The studios want to pay using the home video formula: 0.3% to 0.36% of the studio's receipts. Thus, the Guild wants 7 or 8 times what the studios are offering. The Guild wants the studios to revise their proposal, particularly since the Guild dropped its demand for a doubling of DVD residuals. The studios have not done so. The studios' numbers are hard to justify, because there is essentially no cost of goods for downloads and streaming, whereas high cost of goods was the justification for the low home video formula when it was first introduced. The parties should compromise on 1.2%. See [Writers and Producers: Here's the Deal They Should Make](#).
- For ad-supported (or other free-to-the-user) exhibition, the studios want a six-week window where no residuals would be payable. The Guild is apparently agreeable to 3 days. The studios also apparently still want the right to designate other uses as promotional, even where the whole program is shown and ad revenue is received; the Guild rejects this proposal. It's not clear what the limits on such promotional designation would be under the studios' proposals – i.e., could they arbitrarily designate any usage as promotional.
- After that window, the studios want a formula that works out to a one-time residual of \$253 for a one-hour television program and \$139 for a half-hour. The Guild wants ten times these amounts for the first year, with additional amounts for (a) later years; (b) viewings in excess of 100,000 viewings per three-month period; and (c) viewings outside the U.S. and Canada. For theatrical movies, the Guild wants 2.5% of the studio's receipts, whereas the studios have not made a proposal.
- Note that the distinction in the Guild's ad-supported proposal appears to be between user-paid exhibition and free-to-the-user exhibition, not between download and streaming.

These often correlate — i.e., download is often paid (such as on iTunes) and streaming is often free (ad-supported), but not always. In other words, downloads could be ad-supported, and streaming can be pay-per-view or by subscription. Press reports have generally described the proposals by distinguishing between downloads and streaming, but this does not appear to be an accurate description of the proposals.

- It's reasonable for the Guild to want additional payments on ad-supported exhibition for every 100,000 views, because additional views generate more ad revenue to the studios; likewise, as to wanting more compensation for later years. Other than that, it's hard to tell whose numbers are more reasonable without knowing what amount of ad revenue a typical half-hour or one-hour television show, or a movie, can generate online or via cell phone.

New Media Jurisdiction. The studios are apparently willing to give the Guild jurisdiction over writing derivative works, meaning Internet and cell phone series that are spinoffs of television shows and movies. However, they are not willing to give the Guild jurisdiction over original (non-derivative) work created for new media. The Guild's numbers suggest that the cost of doing so would be low, but the studios are right to worry that they might have trouble competing with non-unionized companies (and individuals) in this area. The Guild should accept this compromise. The companies should, however, agree to credit parity — if the director gets credit on an online video, the writer should too; credit protection is important, and was actually a key reason the Guild was founded.

Made-for-Pay TV Residuals. The Guild wants significant increases in these residuals, which is understandable given the popularity of series on HBO and Showtime. Any such increases would probably be granted to the DGA, SAG and IATSE (the IA) as well (see Reflections on Residuals: Go Forth and Multiply), making this an expensive issue for the companies. This issue has not been discussed in the press.

Animation. The Guild wants jurisdiction on animation, and says the cost to the companies would be low. Nonetheless, in order to avoid angering the IA, I predict that the companies will not concede this issue.

Reality. This is a fairly expensive issue. For that reason, and to avoid angering the IA, I predict that the companies will not concede this issue. There's another reason too: if the Guild had jurisdiction over reality, it could deny the companies the ability to substitute reality programming for scripted programming during the next strike, whenever that occurs (or is threatened) — thus giving the Guild more leverage. The companies don't want to give the Guild that leverage.

Minimum Compensation. The Guild wants a 3.5% increase, whereas the companies want to increase some minimums by 3%, some by 2% and some not at all. The parties will figure this one out if they can solve the bigger issues.

Total Economic Difference Between the Parties. It's difficult to determine the distance between the parties. The Guild's figures suggest a difference over three years of \$876M to \$1.87 billion, taking account of the fact that some of the demands by the WGA on residuals would imply related increases for the other three unions (DGA, SAG and IA). Splitting the difference results in an increased cost per-company, per-year of only \$18M to \$39M. There's definitely a

deal to be done. (The studios may have an analysis that shows a bigger difference, but maybe not — the studios undoubtedly think the WGA's proposal will cost more than the \$152M asserted by the Guild, but the studios also say that their own proposal is worth more about \$100M more than the Guild says it is.)

Both parties are hurt by the strike, but the challenge for the WGA is that the studios ultimately have more leverage, in part because they can choose to suspend negotiations and make a deal with the DGA instead (which would be more favorable to the studios than the writers want). See [Writers' Strike: Why They're Talking](#). The parties seem to finally be truly engaged in negotiation, not finger-pointing. For everyone's sake, let's hope we see a deal soon.